



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
November 14, 2012**

TO: Mayor and City Council
FROM: Gary D. Peterson, Chief of Police
SUBJECT: Aggressive Solicitation Ordinance
DATE: October 16, 2012

RECOMMENDATION:

Public hearing to introduce an ordinance amending the Martinez Municipal Code Title 9, Public Peace, Morals and Welfare by adding Chapter 9.58 Aggressive Solicitation, which prohibits aggressive solicitations and restrict solicitations while vehicles are in operation within ten feet of any intersection of city highways, including intersections of city streets and state highways or state highway on- or off-ramps.

BACKGROUND:

City staff members have received several complaints from residents, visitors and members of the business community regarding the recent rise in instances in which persons have been the victims of begging or soliciting through harassing, threatening, or intimidating tactics calculated to deprive the person of property against his/her will and out of fear for his/her personal safety or physical property.

Some of these instances have resulted in discouragement of residents and visitors to frequent certain areas of the City and the loss of business to those businesses where such harassing solicitation tactics are being employed. Individual merchants, Main Street Martinez and members of the Chamber of Commerce and Amtrak Staff and Police have all recounted experiences with aggressive solicitors who used harassing tactics, such as intentionally blocking the path of the person who is the object of the solicitation or following closely while demanding money or other thing of value, after being told that the person does not want to give them money or other thing of value to the solicitor.

Since September 2012, Police staff has met with merchants, downtown residents, homeless outreach, Main Street Martinez and Amtrak to discuss the issues arising out of aggressive soliciting in the downtown. Police have also conferred with City staff including City Administration, Recreation and Public Works on possible strategies and solutions for reducing aggressive soliciting.

Our Neighborhood Policing Area (NPA) officer for the downtown has worked side by side with homeless outreach to connect individuals with available services, such as medical and housing. The NPA officer has also met with several merchants in an effort to educate them on the issues relating to aggressive soliciting. Thus far, these efforts have not substantially improved the situation.

The municipal code changes recommended here are needed and are the result of input from all of the stakeholders mentioned herein. In addition to the proposed ordinance, the stakeholders are recommending a public information campaign directed at raising awareness of the Municipal Code changes among City residents, the transient population and local business owners prior to issuing citations for violations thereto. Stakeholders are already working with staff to develop materials to be used to educate the public on this issue.

The suggested language seeks to establish clear parameters of conduct that prohibit harassing forms of begging and soliciting to safeguard the health and welfare of residents, visitors and the business community.

Police have also seen an increase in solicitations at intersections within the City. Solicitors have approached and/or stopped motorists causing other motorists to unexpectedly stop, and cause unnecessary delays. This unexpected stop and go transaction constitutes a public safety hazard which will likely result in traffic collisions in the near future if it is not addressed immediately. This type of solicitation delays and disrupts the efficient flow of traffic at intersections.

The suggested language promotes the safe and orderly flow of traffic and seeks to prevent disruptions of traffic occurring while vehicles are in operation within ten feet of any intersection of city highways, including intersections of city streets and state highways or state highway on- or off-ramps.

DISCUSSION :

Legal Constraints to Regulation

City regulation of certain public property implicates First Amendment and California Liberty of Speech Clause considerations. In particular, it has been established by the courts that solicitation is protected speech under both the California Constitution and the First Amendment to the United States Constitution. Under either analysis, the extent to which a City can regulate conduct on its property depends upon the nature of the forum. Public sidewalks and public parks, for example, are considered “traditional public fora,” which are widely open to all members of the public for the free exchange of ideas. Thus, a City cannot regulate the content of speech in such fora unless it can demonstrate that the regulation is both necessary and narrowly tailored to achieve a compelling governmental interest. Thus, content based regulations of expressive activity in traditional public fora are suspect and should be avoided.

However, a government is not without authority to regulate the use of its property. A government may regulate the time, place and manner in which its property may be used so long as the regulations are designed to serve a “substantial governmental interest” and do not unreasonably limit “alternative avenues of communication.” Because the ordinance proposed

here has been narrowly tailored to address a problem with public conduct without unduly limiting alternative avenues of communication, we believe the provisions to be legally permissible under both state and federal free speech analyses.

Again, such limitations are geared toward balancing interests in competing public uses of property and public activities and protecting the public health, safety and welfare, while not impinging on expressive rights.

FISCAL IMPACT:

In addition to the proposed ordinance, staff recommends continuing to develop a public information campaign directed at raising awareness of the Municipal Code changes among City residents, the transient population and local business owners prior to initiating citations for violations thereto.

If Council adopts the recommended ordinance, these education activities would be conducted during the 30-day period of time before the ordinance takes effect. There will likely be some nominal costs associated with producing written educational materials and some staff time expended in community education. The costs are not expected to be significant. The Police Department could use funds available in its 2010 JAG Grant to cover the cost associated therewith because the expenditure will enhance the Neighborhood Policing Area Initiative.

ACTION:

Motion to introduce an ordinance amending the Martinez Municipal Code Title 9, Public Peace, Morals and Welfare by adding Chapter 9.58 Aggressive Solicitation.

Attachment: Ordinance

APPROVED BY:



City Manager

ORDINANCE NO. C.S.

AMENDING THE MARTINEZ MUNICIPAL CODE
TITLE 9, PUBLIC PEACE, MORALS AND WELFARE BY ADDING
CHAPTER 9.58 AGGRESSIVE SOLICITATION

The City Council of the City of Martinez does ordain as follows:

SECTION I. Chapter 9.58 is added to the Martinez Municipal Code to read as follows:

Chapter 9.58

AGGRESSIVE SOLICITATION

9.58.010 Findings.

- A. The City Council finds that there has been a recent rise in instances in which persons have been the victims of begging or soliciting through harassing, threatening, or intimidating tactics calculated to deprive the person of property against his/her will and out of fear for his/her personal safety or physical property.
- B. The City Council finds that some of these instances have resulted in discouragement of residents and visitors to frequent certain areas of the City and the loss of business to those businesses where such harassing solicitation tactics are being employed.
- C. The City Council finds that harassing forms of begging and soliciting should be prohibited to safeguard the health and welfare of residents, visitors and the business community.
- D. The City Council finds that direct personal solicitation of drivers at intersections is distracting and threatens the safe and orderly flow of traffic along City streets.

9.58.020 Definitions.

For the purposes of this Chapter the following terms shall have the following meanings:

- A. An aggressive solicitation occurs whenever a solicitor (as defined by subsection (B) of this section) commits any act which places a person who is the object of the solicitation

in reasonable fear for his/her personal safety or property. An aggressive solicitation may occur under the following circumstances, provided that the object of the solicitation is in reasonable fear for his/her personal safety or property:

1. The solicitor intentionally blocks the path of the person who is the object of the solicitation; or
 2. The solicitor persists in following closely the person who is the object of the solicitation, while the solicitor continues to demand money or other thing of value, after the person has informed the solicitor by words or conduct that the person does not want to give money or other thing of value to the solicitor.
- B. "Solicit" means to ask for the immediate donation or payment of money or other thing of value in a coercive, threatening, or harassing manner, whether by words, bodily gestures, signs or other means.
- C. "Solicitor" is one who solicits as defined in subsection (B) of this section.
- D. "Fear for His/Her Personal Safety" Defined. The following facts, among others, may be considered in deciding whether a reasonable person would be caused to fear for his or her safety or property:
1. The occurrence of threatening gestures or other threatening conduct of the solicitor, including physically following the object of the solicitation.
 2. The proximity of the solicitor to the object of the solicitation and the duration of the solicitation.
 3. The solicitor's making of physical contact with the object of the solicitation.
- E. "Intentionally block" means to walk, stand, sit, lie or place an object in such a manner as to block passage by another person or to require another person to take evasive action to avoid physical contact.

9.58.030 Prohibition of aggressive solicitation.

It shall be unlawful for any person on the streets, sidewalks, or other places open to the public, whether publicly or privately owned, to engage in any act of aggressive solicitation as defined by this Chapter.

9.58.040 Prohibition of solicitation in intersections.

- A. In order to promote the safe and orderly flow of traffic and to prevent disruptions of traffic occurring while vehicles are operating at intersections within the City, no person may request, ask, demand, or beg for any money, goods or services, including offering any services in exchange for money, goods or services, from any driver or passenger of any vehicle that is in operation within ten feet of any intersection of city highways, including intersections of city streets and state highways or state highway on- or off-ramps.
- B. As used in this section, "highway" shall be defined by Vehicle Code Section 360.
- C. As used in this section, "intersection" shall be defined by Vehicle Code Section 365.

9.58.050 Violation—Penalty.

Any person who violates any provision of this chapter is guilty of an infraction and is subject to punishment as provided for in Chapter 1.12 of this code.

SECTION II. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

SECTION III. Effective date. This ordinance shall become effective 30 days after the date of adoption.

SECTION IV. Posting. The City Clerk shall cause this ordinance to be published within fifteen days after its adoption, at least once, with the names of those city council members voting for or against the ordinance, in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Deputy City Clerk

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I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at an Adjourned Regular Meeting of the City Council of the City of Martinez, held on the 14th day of November, 2012, and duly passed and adopted at a Regular Meeting of said City Council held on the day of , 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ